IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 456 (S/S) of 2007

1. Aishwani Kumar S/o Sri Kalaram
   A.S.I.O. Rudrapur, Distt. Udham Singh Nagar
2. Pradeep Kumar Paliwal S/o Sri Govind Ballabh Paliwal
   A.S.I.O. Haldwani, Distt. Nainital
3. Sushil Kumar Sharma S/o Late Sri Bhagwan Sharma
   A.S.I.O. Roorkee, Distt. Haridwar
4. Har Kanwal Singh S/o Sri Gurmej Singh,
   Senior Sub-Inspetor, Police Station Kotwali, Dehradun,
   Distt. Dehradun
5. Ravi Tyagi S/o Sri R.S. Tyagi,
   Senior Sub-Inspector, Police Station Patel Nagar, Dehradun
   Distt. Dehradun ------- Petitioners

Versus

1. State of Uttarakhand through Secretary Homes,
   Uttarakhand Govt., Dehradun
2. State of U.P. through Secretary Home, U.P., Lucknow
3. Additional Secretary, Home Uttarakhand Govt. Dehradun
4. Director General of Police, Uttarakhand Govt. Dehradun
5. Director General of Police, U.P. Lucknow.
6. Additional Director General of Police, (Administration) (Police Head Quarter) Dehradun, Distt. Dehradun

-------- Respondents

AND

Writ Petition No. 458(S/S) of 2007

Ajay Chauhan, S/o Balbir Singh,
presently posted as Sub Inspector, Dehradun and 14 others

-------- Petitioners

Versus

1. Union of India, through its Secretary, Ministry of Personnel, Public Grievances & Pension, New Delhi 110001
2. Principal Secretary, State Advisory Committee, Government of U.P. Lucknow
3. Member Secretary State Advisory Committee, Government of Uttarakhand Dehradun, District Dehradun

4. State of Uttarakhand through its Principal Secretary (Home) Dehradun, District – Dehradun
5. Director General of Police, Uttarakhand, Dehradun District Dehradun
6. State of U.P. through its Secretary Home (Police) Lucknow
7. Director General of Police, U.P. Lucknow.

------ Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rajendra Dobhal, learned counsel for the petitioners in Writ Petition No. 456 of 2007 (S/S) and Sri Rakesh Thapliyal, learned counsel for the petitioners in Writ Petitioner No. 458 of 2007 (S/S), Smt. Anjali Bhargav, learned counsel for the Union of India in Writ Petition No. 458 of 2007 (S/S) and learned Standing Counsel State of Uttarakhand, and Smt. Beena Pandey, learned Standing Counsel State of U.P. in both the writ petitions.

In both the writ petitions, the controversy raised by the petitioners is same and as such both the writ petitions are being disposed of by this common judgment.

The stand of the petitioners is that they were appointed in the Police Department long back. Prior to bifurcation of State of Uttarakhand, the petitioners had opted for State of U.P. However, after creation of State of Uttarakhand, the petitioners made a requisition to the State of U.P./State of Uttarakhand as well as to Union of India for change of their option from U.P. to Uttarakhand. Final allocation list has already been published by the Government of India, wherein names of the petitioners find place in the list of candidates finally allocated to State of Uttar Pradesh.

Petitioners' claim is that the Government of India, Ministry of Personnel Training, Personnel Grievances and Pensions, New Delhi has issued a circular dated 15th September, 2004 to the Chief Secretary of Uttar Pradesh as well as Uttarakhand to the effect that a large number of representations have been received from personnel requesting for consideration of their mutual transfer with another consenting State services personnel. Since the Central Government has already issued final allocation list, it finds no reason to entertain such requests. However, it is open to the successor State Governments to consider requests of mutual transfer based on broad consensus arrived between the State Governments, inter alia, either defining the terms and conditions for such consideration or by finding suitable Rules for this purpose.

The Submission of the learned counsel for the petitioners is that in pursuance of the aforesaid Circular of Government of India, the petitioners have applied for mutual transfer. In Writ Petition No. 456 of 2007 (S/S), it has been stated by the petitioners that many Sub Inspectors, who were allotted to the State of Uttarakhand and at present serving in the State of U.P. have obtained the interim order from the Hon'ble High Court of Allahabad and on the basis of interim order, they are continuing in the state of U.P. and they are not inclined to join their services in the State of Uttarakhand. In Writ Petition No. 458 of 2007 (S/S), in para 5 of the writ petition, the petitioners have stated that the incumbents, who are serving in the State of U.P. but allocated to the State of Uttarakhand preferred various writ petitions before the Hon'ble High Court of Judicature at Allahabad and they have got the stay order to the extent that they may not be relieved for the State of Uttarakhand. Consequently, the employees who were

allocated to the State of Uttarakhand could not be relieved and this is the reason that due to the scarcity of the employees the present petitioners were permitted to serve in the State of Uttarakhand.

The allegations are vague. Further these cases do not come within the purview of mutual transfer. The stay order may have been passed by the Hon'ble High Court for any reason, which is not known to the petitioners or to the Court or there may be some other reasons for getting the stay order from Hon'ble Allahabad High Court.

The petitioners are claiming benefit solely on the basis of Circular dated 15the September, 2004 of the Government of India, wherein the Government of India has left it open to the State Governments to consider the requests of mutual transfer based on broad consensus arrived between the State Governments, inter alia, either defining the terms and conditions for such consideration or by finding suitable Rules for this purpose. The Circular itself speaks that it is open for the State Government that if it wants the services of such persons, may come to an agreement with other State for mutual transfer and considers the requests of such employees for change of their option. The decision is to be taken jointly by both the State Governments and the State of Uttarakhand cannot unilaterally take decision on this matter as it is for both the State Governments to take decision. It is not disputed that the petitioners had opted for State of U.P. and they have been finally allocated for State of U.P.

In the circumstances, I do not find any ground to direct the respondents not to relieve the petitioners for State of U.P.

However, it is open to the Government to consider the representations, if any made by the petitioners, for mutual transfer, if the Government is of the opinion that the services of the petitioners are required by the State Government. The Government may pass appropriate order on the representation for mutual transfer prior to relieving the petitioners for State of Uttar Pradesh in case the Government is in need of services of petitioners.

With the above direction, both the writ petitions are finally disposed of.

(M.M. Ghildiyal, J.)

03.05.2007
VKS